

1 STATE OF GEORGIA
2 COUNTY OF FULTON
3 CITY OF SOUTH FULTON
4
5

6 RESOLUTION No. 2019-004
7

8 A RESOLUTION FOR THE ASSUMPTION AND CONTINUATION OF TSPLOST
9 AGREEMENTS WITHIN THE CITY OF SOUTH FULTON AND FOR OTHER LAWFUL
10 PURPOSES

11 WHEREAS, the City of South Fulton ("City") is a municipal corporation duly
12 organized and existing under the laws of the State of Georgia;

13
14 WHEREAS, the duly elected governing authority of the City is the Mayor and City
15 Council ("City Council");

16
17 WHEREAS, Fulton County, Georgia (referred to herein as the "County") entered
18 into multiple agreements (referred to herein as TSPLOST Agreements") with contractors
19 for the provision of services within the City funded by a 2016 transportation special
20 purpose local option sales tax (referred to herein as "TSPLOST") referendum;

21 WHEREAS, the City, by incorporation, has jurisdiction over the formally
22 unincorporated areas of Fulton County subject to the TSPLOST Agreements;

23 WHEREAS, the City Council desires to ensure the continuity of TSPLOST
24 funded projects ("TSPLOST Projects") within the City;

25 WHEREAS, the County has agreed to timely transfer City designated TSPLOST
26 funding to the City through an intergovernmental agreement adopted by the County on
27 or about December 19, 2018;

28 WHEREAS, the City Council desires, through this Resolution, to authorize the
29 City Manager to execute and assume the TSPLOST Agreements to help ensure the
30 continuation of TSPLOST Projects within the City; and

31
32 WHEREAS, this Resolution is in the best interests of the health and general
33 welfare of the City, its residents and general public.
34

35 **NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL** as
36 follows:

37
38 **Section 1.** The City Manager is hereby authorized to enter into and execute
39 assumption agreements (referred to herein as "Assumption Agreements") with entities
40 contracting with the County for TSPLOST Projects funded through the 2016 TSPLOST
41 referendum. The Assumption Agreements shall be in similar form to the draft
42 agreement attached hereto as Exhibit A. Said Assumption Agreements may be
43 modified by the City Manager, in consultation with the City Attorney, but under no
44 exception shall the Assumption Agreements:

- 45
46 1. Entitle any entity to any amount of compensation, collectively from the City and
47 County, which exceeds the total TSPLOST Project contract amount set forth
48 within the TSPLOST Agreement between the contractor and County which is to
49 be assumed; and/or
50
51 2. Obligate the City for the payment of any funds, which when combined with
52 amounts paid by the County for the involved project, exceeds the total TSPLOST
53 Project contract amount set forth within the TSPLOST Agreement between the
54 contractor and County which is to be assumed.
55

56 In addition, all Assumption Agreements authorized under this Resolution shall be
57 contingent at all times upon the City's receipt of 2016 TSPLOST funds from County.
58 All parties under the Assumption Agreements shall stop work immediately upon the
59 City's request or upon notice that the City has not timely received TSPLOST funds from
60 the County for the payment of Services under the Assumption Agreements.
61

62 *****
63

64 **Section 2.** It is hereby declared to be the intention of the Mayor and Council that: (a)
65 All sections, paragraphs, sentences, clauses and phrases of this Resolution are or
66 were, upon their enactment, believed by the City Council to be fully valid, enforceable
67 and constitutional.

68 (b) To the greatest extent allowed by law, each and every section, paragraph, sentence,
69 clause or phrase of this Resolution is severable from every other section, paragraph,
70 sentence, clause or phrase of this Resolution. No section, paragraph, sentence, clause
71 or phrase of this Resolution is mutually dependent upon any other section, paragraph,
72 sentence, clause or phrase of this Resolution.

73 (c) In the event that any phrase, clause, sentence, paragraph or section of this
74 Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or
75 otherwise unenforceable by the valid judgment or decree of any court of competent
76 jurisdiction, it is the express intent of the City Council that such invalidity,
77 unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not

78 render invalid, unconstitutional or otherwise unenforceable any of the remaining
79 phrases, clauses, sentences, paragraphs or sections of the Resolution.

80 **Section 3.** All Resolutions and parts of Resolutions in conflict herewith are hereby
81 expressly repealed.

82 **Section 4.** The effective date of this Resolution shall be the date of adoption unless
83 provided otherwise by the City Charter or state and/or federal law.

84
85 **Section 5. *Instruction to City Clerk.*** Unless vetoed, the City Clerk is hereby directed to
86 forward a copy of this Resolution to the City Public Works Director.

89
90 The foregoing **RESOLUTION No. 2019-004**, adopted on **February 1, 2019** was offered
91 by Councilmember **Rowell**, who moved its approval. The motion was seconded by
92 Councilmember **Willis**, and being put to a vote, the result was as follows:
93

	AYE	NAY
94		
95		
96 William "Bill" Edwards, Mayor	<hr/>	<hr/>
97 Mark Baker, Mayor Pro Tem	<hr/>	<hr/>
98 Catherine Foster Rowell	<hr/>	<hr/>
99 Carmalitha Lizandra Gumbs	<hr/>	<hr/>
100 Helen Zenobia Willis	<hr/>	<hr/>
101 Gertrude Naeema Gilyard	<hr/>	<hr/>
102 Rosie Jackson	<hr/>	<hr/>
103 khalid kamau	<hr/>	<hr/>
104		
105		
106		

107 THIS RESOLUTION adopted this 1st day of February 2019. CITY OF SOUTH
108 FULTON, GEORGIA.
109
110
111

112
113 
114
115 WILLIAM "BILL" EDWARDS, MAYOR
116
117
118
119

120 ATTEST:

121
122 
123
124 S. DIANE WHITE, CITY CLERK
125
126

127
128 ITEM# Res2019-004 DATE 2/1/2019
129
130

131 APPROVED AS TO FORM:


132 
133
134
135 EMILIA C. WALKER, CITY ATTORNEY
136
137
138



Exhibit A

**ASSUMPTION AGREEMENT BETWEEN THE CITY OF SOUTH FULTON AND
[INSERT] FOR THE PROVISION OF TSPLOST SERVICES WITHIN THE CITY OF
SOUTH FULTON**

THIS ASSUMPTION AGREEMENT (referred to herein as “Assumption”) is made and entered into, effective as of the ____ day of _____, _____ by and between the City of South Fulton, a municipal corporation of the State of Georgia (referred to herein as the “City”), [INSERT], a Georgia corporation (referred to herein as the “Consultant”) (the parties collectively referred to herein as the “Parties”) as follows:

WITNESSETH

WHEREAS, the Consultant entered into an agreement with Fulton County, Georgia (referred to herein as the “County”) on or about [INSERT] (referred to herein as “TSPLOST Agreement”, attached hereto as Exhibit A and incorporated herein by reference) for the provision of services within the City (referred to herein as “Services”) funded by a 2016 transportation special purpose local option sales tax (referred to herein as “TSPLOST”) referendum;

WHEREAS, Consultant and the County have extended the TSPLOST Agreement by renewals. The current renewal (referred to herein as “Current Renewal”) is set to expire on or about [INSERT], attached hereto as “Exhibit B” and incorporated herein by reference;

WHEREAS, Consultant has performed and received payment from the County for Services under the TSPLOST Agreement and subsequent renewals through the date of this Assumption;

WHEREAS, the City, through its incorporation, has jurisdiction over the formally unincorporated areas of Fulton County subject to the TSPLOST Agreement;

WHEREAS, the City and County desire to ensure the continuity of TSPLOST funded projects within the City;

167 **WHEREAS**, the County has agreed to timely transfer City designated TSPLOST funding
168 to the City through an intergovernmental agreement adopted by the County on or about
169 December 19, 2018 (referred to herein as TSPLOST MOU, incorporated herein by reference and
170 attached hereto as "Exhibit C"); and

171 **WHEREAS**, the Parties desire to enter into this Assumption for the continuation of
172 Services to be performed by Consultant under the TSPLOST Agreement.

173 **NOW THEREFORE**, for and in consideration of the mutual promises herein, together
174 with other good and valuable consideration, the receipt and sufficiency of which are hereby
175 acknowledged, the Parties do hereby agree as follows:

176 **1. Scope.** This Assumption shall govern the administration of Consultant's provision of
177 Services within the City as set forth the TSPLOST Agreement. Consultant shall owe all
178 obligations and responsibilities to City which are owed by Consultant to the County under
179 the TSPLOST Agreement. The Parties shall be subject to all provisions of the TSPLOST
180 Agreement with the exception that:

181 a. All references to Fulton County or the County in the TSPLOST Agreement shall be
182 interpreted to instead refer to the City and/or the corresponding City law, agent and/or
183 entity. For example, references to "Fulton County" shall refer to "South Fulton,"
184 "County Manager" shall refer to "City Manager," and the "Fulton County Code" shall
185 refer to the "South Fulton Code" etc.

186
187 b. The final three paragraphs of ARTICLE I of the TSPLOST Agreement, beginning with
188 the words "The foregoing" and ending with the phrase "Item #18-0346" are hereby
189 deleted.

190
191 c. The language under ARTICLE 9, CONTRACT TERM, of the TSPLOST Agreement is
192 hereby deleted in its entirety, and replaced to read as follows:

193
194 "The initial term of this Agreement shall commence on February, 15 2019 or
195 the date which the Current Renewal expires, whichever occurs first (referred to
196 herein as the ("Commencement Date")) and shall end at 11:59 p.m. on the 31th
197 day of December, 2019. This Agreement shall automatically renew for two (2)
198 additional one year terms, unless terminated earlier as provide for herein."

199
200 d. ARTICLE 10, COMPENSATION, of the TSPLOST Agreement is hereby revised to
201 include the additional language as follows:

202
203 "Consultant shall only be entitled to compensation from the City for work orders,
204 costs and services approved by the City after the initial term of this Agreement. The
205 total contract amount shall include compensation paid by the County and City."

- 206
207 e. ARTICLE 11, PERSONNEL AND EQUIPMENT, of the TSPLOST Agreement is
208 hereby revised to delete the following language in the first sentence of the second
209 paragraph:

210
211 “none of whom shall be employees of or have any contractual relationship with
212 County.”

- 213
214 f. The language under ARTICLE 34, NOTICES, of the TSPLOST Agreement is hereby is
215 hereby deleted in its entirety, and replaced to read as follows:

216
217 “With the exception of the submission of invoices as set forth under ARTICLE 40,
218 INVOICING AND PAYMENT, of this Agreement, all notice required or
219 permitted by this Agreement shall be in writing and shall be deemed to have been
220 sufficiently given for all purposes if sent by certified mail or registered mail,
221 postage and fees prepaid, addressed to the party to whom such notice is to be given
222 at the address set forth below or at such other address as has been previously
223 furnished in writing, to the other party or Parties. Such notice shall be deemed to
224 have been given when deposited in the United States Mail.

225
226 If to the City:

227
228 Odie Donald, City Manager
229 City of South Fulton City Hall
230 5440 Fulton Industrial Blvd. SW
231 Atlanta, Georgia 30336

If to Contractor:

232
233 [INSERT]

234
235 With a copy to:

236 Antonio Valenzuela, Public Works Director
237 City of South Fulton City Hall
238 5440 Fulton Industrial Blvd. SW
239 Atlanta, Georgia 30336

With a copy to:

240
241 [INSERT]

242 Any party may at any time change the address where notices are to be sent or the
243 person to whom such notices should be directed by the delivery or mailing to the
244 above persons a notice stating the change.”

- 245 g. ARTICLE 40, INVOICING AND PAYMENT, of the TSPLOST Agreement is hereby
246 revised to set forth the following Mail and Email address for the submission of invoices:

247 [INSERT]

- 248
249 2. **Conflict.** In the event of a conflict between this Assumption and the TSPLOST
250 Agreement, the terms of this Agreement shall control.
251

252 **3. Effective Date.** This Assumption shall become effective upon its authorization by the
253 City Council, and execution and exchange thereafter by both Parties.
254

255 **4. Contingency.** This Assumption is contingent at all times upon the City's receipt of 2016
256 TSPLOST funds from County. The parties acknowledge and agree that the funds used by
257 the City to compensate Consultant under this Agreement shall come from TSPLOST
258 funds received by the City from the County. Consultant shall stop work immediately
259 upon the City's request or upon notice that City has not timely received TSPLOST funds
260 from the County for the payment of Services under this Assumption. Title to any
261 supplies, materials, equipment, or other personal property shall remain in the Consultant
262 until fully paid for by the City.
263

264 **5.** This Assumption shall not be changed or modified except by agreement in writing
265 executed by all Parties hereto.
266

267 **6.** This Assumption shall be deemed to have been made and shall be construed and
268 interpreted in accordance with the laws of the State of Georgia.
269

270 **7. Severability.** It is agreed that the illegality or invalidity of any term or clause of this
271 Assumption shall not affect the validity of the remainder of the Assumption, and the
272 Assumption shall remain in full force and effect as if such illegal or invalid term or clause
273 were not contained herein.
274

275 **8.** The Parties to this Assumption shall comply with all applicable local, State, and
276 Federal statutes, ordinances, rules and regulations regarding TSPLOST fund use.
277

278 **9. Non-waiver.** No consent or waiver, express or implied, by any party to this Assumption
279 to any breach of any covenant, condition or duty of another party shall be construed as a
280 consent to or waiver of any future breach of the same.
281

282 **10. Execution.** This Assumption shall be executed in several counterparts, each of which
283 shall be an original and all of which shall constitute but one and the same instrument.

284 **IN WITNESS WHEREOF,** Fulton Consultant and City of South Fulton, the Parties
285 hereunto have set their hands and affixed their seals on the day and year first above written.
286

287 [SIGNATURES APPEAR ON FOLLOWING PAGE]
288
289
290
291

BY CONSULTANT:

By:

Date

Title:

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
___ DAY OF _____, 2019.

NOTARY PUBLIC

My Commission Expires: _____

BY CITY OF SOUTH FULTON:

Odie Donald, City Manager

Approved as to form by:

Emilia C. Walker, City Attorney